

REMARKS

Currently, claims 1, 4-10, 12, 14, 17, 20-26, 28, 29, and 31-44, including independent claims 1 and 17 are pending in the present application.

Independent claims 1 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over International Application No. WO 00/76558 to Persson in view of U.S. Patent No. 4,407,960 to Tratnyek as evidenced by the June 1995 BOC Gases MSDS for ethylene oxide, further in view of U.S. Patent No. 6,149,952 to Horan, further in view of *Analyst*, 1994, 119(5) (abstract) to Baker, further in view of U.S. Patent App. No. 2003/0211618 to Patel, further in view of International Application No. WO 97/12030 to Karapasha, further in view of U.S. Patent App. No. 2002006425 to Takaoka, and further in view of European Patent App. EP 1214878 to Stoddart. However, there is no incentive to combine the references as suggested to arrive at Applicants' claims. Critically, even if the combination would be made, which is denied, the combination fails to disclose all the limitations of Applicants' independent claims.

I. There Is No Incentive To Combine The References As Suggested To Arrive At Applicants' Claims.

Persson discloses an absorbent article with an active additive and a visual indicator. (Page 3.) The visual indicator indicates the active status of the additive. Persson indicates that that active ingredient causes a single color change in the visual indicator. The color change indicates when the active ingredient is functioning and the absence of a color change reassures the purchaser that the active ingredient has not been consumed and is ready to use. (Pages 6-7.) The color change disclosed by Persson is best described as either "all or none." There is either a color change or there

is not. Persson utterly fails to disclose indicating the remaining effectiveness of the active ingredient and is not intended to do so. This failing is not remedied by the other references cited in the Office Action.

Tratnyek discloses an indicating composition and system which monitors sterilization via chemical reactions with ethylene oxide that cause a visually perceptible color change from color to colorless. The color is unambiguous and irreversible.

(Abstract.) **It is axiomatic that an indicating composition and system used to indicate when sterilization is complete would have no reason to indicate anything less than complete sterilization.** “Degrees” of sterilization are useless to the user as the intended purpose of the invention is to signal a complete sterilization process. Accordingly, Tratnyek does not disclose or fairly suggest utilizing differing concentrations of the indicator system in different zones in order to indicate the “degree” of sterilization to the user. Nor does it provide incentive for modifying another reference to do so.

Horan discloses a system that indicates the presence of bacterial growth in packaged foods. Horan discloses no odor absorbing properties. Instead, Horan is configured to simply detect the presence or absence of bacteria in food products to allow the consumer to determine whether the food is safe for consumption. Clearly, one skilled in the art would not modify the indicators of Horan to attempt to quantify the amount of bacteria present. If the bacteria are present at all, the food is contaminated. The “degree” of bacteria contamination is immaterial. Thus, there is no motivation or suggestion to show “degrees” of contamination to the user nor would one skilled in the

art glean an incentive from the Horan reference to modify any of the other cited references in this manner.

Patel discloses a device for monitoring sterilization of medical and kitchen supplies and canned foods as well as cooking of microwaved food via steam causing the device to undergo a color change. (Abstract.) Again, like the Persson, Tratnyek and Horan references, Patel is an "all or none" system in which a color change occurs upon completion of sterilization or upon preparedness of food being microwaved. There is simply no disclosure, or even a logical reason, to indicate partial values of sterilization or food preparedness to the user. Nor does the reference provide an incentive to one skilled in the art to modify the other references in such a manner. Clearly, Patel fails to provide any incentive to one skilled in the art to apply at least one visual indicating agent to two or more zones in different concentrations to indicate the remaining odor absorbing capacity of the article.

The abstract of Baker, meanwhile, discloses an optical formaldehyde sensor based on the use of immobilized pararosaniline. Baker indicates simply that pararosaniline was found to respond to formaldehyde by developing a purple chromogen. (Abstract.) There is simply no disclosure to apply at least one visual indicating agent to two or more zones in different concentrations to indicate the remaining odor absorbing capacity of the article. Nor does Baker provide incentive to one skilled in the art to do so or to modify the other cited references in this manner.

Karapasha discloses a mixture of odor-controlling black carbon particles, substantially white particles selected from the group consisting of white odor-controlling agents and white color tasking materials; and a water-dispersible binder. The intent of

the invention is to make the carbon particles appear lighter in color to the naked eye as compared to their original black color. (Summary of Invention.) The intent of Karapasha is to hide the odor absorbing carbon particles so that the user does not notice them. Karapasha is completely silent with respect to visual indicators nor does it provide any incentive to one skilled in the art to modify the other cited references in order to employ visual indicating agents in two or more zones configured to indicate the odor absorbing capacity remaining in the article.

Takaoka discloses a photoreactive agent for removing harmful materials which comprises a substrate and a layer containing a photoreactive semiconductor and organic fine particles coated with inorganic fine particles which is formed on at least one side of the substrate. The photoreactive agents remove harmful materials such as malodor, are water-resistant, are not changed in characteristics over a long period of time, and can easily be produced. (Abstract.) The process functions via a photocatalytic effect. Importantly, Takaoka fails to disclose a color change in association with absorbing odors nor does it disclose visual indicating agents of any sort, let alone agents concentrated in two or more zones configured to indicate to the user the odor absorbing capacity remaining in the article. Nor does Takaoka provide incentive to one skilled in the art to modify the other cited references in such a manner.

Stoddart discloses the use of urease inhibitors to prevent, or at least minimize, odor produced by degradation of urea in secreted or excreted body fluids and/or residues of such body fluids. The urease inhibitor is combined with one or more additional elements suitable for delivering the urease inhibitor complex to the situs where urease inhibiting activity is needed. (Abstract.) Stoddart fails to disclose a color

change in association with absorbing odors nor does it disclose visual indicating agents of any sort, let alone agents concentrated in two or more zones configured to indicate to the user the odor absorbing capacity remaining in the article. Stoddart also fails to provide incentive to one skilled in the art to modify the other cited references in such a manner.

Respectfully, the Examiner's suggested combination of the above references exhibits "picking and choosing" elements from unrelated references that have no tie to one another. Nor do the references provide any incentive or reason to combine them. Further, none of the references possess a functionality even approaching Applicants' claims. Additionally, the above combination fails to disclose all the limitations of Applicants' claims. For instance, none of the cited references alone, or in combination, disclose the limitation that the visual indicating agent is present in differing concentrations in two or more zones on the substrate, the concentrations in the two or more zones configured to indicate to the user the odor absorbing capacity remaining in the article. Accordingly, the rejection of independent claims 1 and 17 should be withdrawn and the claims allowed.

The Office Action contends that "it would have been well within the capability of the ordinary skilled artisan to vary the concentration of visual indicators in different places on the article to ensure the color change would be clearly visible to the user" and "common sense logic would lead the ordinary skilled artisan to use differing concentrations to track the remaining use-life of a particular product. " (03/04/2010 Final Office Action, p. 8.)

Respectfully, however, the Final Office Action improperly seeks to take Official Notice of the limitations missing from the cited references; Applicants hereby traverse same. The MPEP provides that with respect to Official Notice that "such rejections should be judiciously applied." MPEP § 2144.03. "Official notice without documentary evidence to support an [E]xaminer's conclusion is permissible only in some circumstances." MPEP § 2144.03(A). **"It would not be appropriate for the [E]xaminer to take official notice of facts *without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.*"** Id. (emphasis added). Further, use of Official Notice should be rare when an application is under a final rejection. MPEP § 2144.03(A).

II. The Suggested Combination Fails To Disclose All The Limitations Of Applicants' Independent Claims.

None of the cited references alone or in combination disclose the limitations of a visual indicating agent being present in differing concentrations in two or more zones on the substrate, the concentrations in the two or more zones configured to indicate to the user the odor absorbing capacity remaining in the article. Nor do the references provide incentive to combine them to arrive at Applicants' claims. Accordingly, the Final Office Action has not satisfied a *prima facie* case of obviousness pursuant to 35 U.S.C. § 103 nor has it met its burden pursuant to the doctrine of Official Notice. Therefore, the rejection of independent claims 1 and 17 should be withdrawn and the claims allowed.

Applicants also respectfully submit that for at least the reasons indicated above relating to corresponding independent claims, the pending dependent claims patentably

define over the references cited. However, Applicants also note that the patentability of the dependent claims certainly does not hinge on the patentability of independent claims. In particular, it is believed that some or all of these claims may possess features that are independently patentable, regardless of the patentability of the independent claims. For instance, none of the cited references disclose the limitation of claim 8 that the indicating agent is applied in differing concentrations in two or more zones to indicate how much of the odor absorbing capacity of the article has not been utilized. Nor do they disclose the limitation of claim 9 that the indicating agent is applied in differing concentrations in two or more zones to indicate how much of the odor absorbing capacity of the article has been utilized. Nor do the references disclose the limitation of claims 20 and 37 wherein the nanoparticles include silica, alumina, or combinations thereof. Moreover, the references fail to disclose the limitation of claims 35 and 38 that the nanoparticles are modified with a metal ion, a chlorite ion, a persulfate ion, a permanganate ion or combinations thereof. Further, they do not disclose the limitation of claim 42 wherein at least one of the zones including the visual indicating agent is configured to change from a first color to a second color, the second color signifying that the article is saturated with odor. Accordingly, the rejections of claims 8, 9, 20, 35, 37, 38 and 42 should be withdrawn and the claims allowed.

As such, Applicants respectfully submit that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Alstrum-Acevedo is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment.

Appl. No. 10/687,269
Amdt. dated June 3, 2010
Reply to Final Office Action of March 4, 2010

Please charge any additional fees required by this Amendment to Deposit
Account No. 04-1403. Respectfully requested.

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Date: June 3, 2010